

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Williamson County, Illinois; Williamson Energy LLC; and :
Williamson Transportation LLC, :
Petitioners, :

Vs. :

T05-0058

Illinois Department of Transportation, :
Respondent. :

Petition seeking the establishment of new railroad-highway grade :
crossings in Williamson County for the construction of new :
railroad spur tracks to serve a mine. :

ORDER

By the Commission:

On October 19, 2005, Williamson County, Illinois ("County"), Williamson Energy LLC ("WE"), and Williamson Transportation LLC ("WT") filed a verified petition with the Illinois Commerce Commission ("Commission") in the above captioned matter seeking an order authorizing the construction and maintenance of certain highway-rail grade crossings at Monroe Avenue, Old Frankfort Road, Old Ben Road, Harris School Road, Williams Prairie Road, Liberty School Road, Dwina Road, Jordans Fort Road, Thomsonville Road and Crawford Road, all in the vicinity of Johnston City, Williamson County, Illinois.

On November 14, 2005, Williamson County, Williamson Energy LLC, and Williamson Transportation LLC ("Petitioners") filed an Amended Petition adding Duncan Road and Eberhardt Road to the list of proposed new highway-rail grade crossings.

On December 7, 2005, pursuant to proper legal notice, an evidentiary hearing was held before an Administrative Law Judge ("ALJ") in the Commission's office in Springfield, Illinois. Appearances were entered by Mr. John H. Doehringer, Attorney for the Petitioners, Mr. Thomas M. Bensen, Special Assistant Attorney General, for the Illinois Department of Transportation, and a Staff member of the Transportation Bureau/Rail Safety Section of the Commission.

Mr. Douglas Dobbins, Senior Engineer for Williamson Energy, testified on behalf of the Petitioners, and was responsible for developing Petitioners' Exhibits 1 through 6. Mr. Dobbins testified that the proposed track would service the Pond Creek Mine ("Mine"), which was expected to produce 8 million tons of coal per year and employ 200-225 employees when it is in full operation. The coal would be shipped from the mine via rail. Williamson Energy LLC and Williamson Transportation LLC expect to invest \$200-225 million in the Mine, including \$12-15 million on the rail development.

WE and WT have borne, and plan to continue to bear, all costs for planning, construction, maintenance, and operation of the proposed rail spurs from the Mine to the Union Pacific Railroad Company ("UP") track to the west and the Illinois Central Railroad Company ("IC" or "CN") track to the east over roadways which fall under the jurisdiction of Williamson County. The west spur will be approximately 5½ miles long with eight crossings (Monroe Avenue, Duncan Road, Eberhardt Road, Old Frankfort Road, Old Ben Harris School Road, Williams Prairie Road, and Liberty School Road) and the east spur will be approximately 4 miles long with four crossings (Dwina Road, Jordans Fort Road, Thomsonville Road and Crawford Road). The expected train traffic, for 8 million tons of coal, would be 2.5-3 trains per day at 25 miles per hour maximum, seven days a week, and includes both railroads. WE/WT expects to have the east spur (to the IC) complete and operational by the end of May 2006. Coal shipments are anticipated to begin in June 2006. Operation of trains will be by either UP or IC personnel over public crossings on track owned by WT and by WT personnel within the Mine property limits.

Mr. Dobbins reiterated that the Petitioners propose to install automatic flashing light signals and gates with bells at all but the Duncan Road and Eberhardt Road crossings. Because of low traffic volume, only reflective crossbuck warning signs were proposed for Duncan Road and Eberhardt Road grade crossings. The proposed crossing surfaces, as shown in Petitioners' Exhibit 6, will be constructed according to a CSX Transportation Standard for a normal duty crossing surface made of timber and asphalt on wood ties. Construction plans have not been prepared, but the Petitioner is willing to prepare and submit said plans to the Commission for its approval. Mr. Dobbins was also aware that the Federal Railroad Administration ("FRA") maintains an inventory of highway-rail grade crossings in the United States and WE/WT is prepared to submit the proper information to the FRA for its records.

Mr. James Webb, Williamson County Engineer, testified on behalf of the Petitioners. Mr. Webb testified that the Williamson County Board passed resolutions (Petitioners Exhibits 1 and 2), on October 11 and November 8, 2005, respectively, agreeing to allow Williamson Transportation LLC to construct track within the County and through the abovementioned roadways. The County Board, via said resolutions, deemed that the project would promote the general welfare, and be in the best interests of the County and its inhabitants. Mr. Webb testified that there were no objections to the new track, the changes in the local roadways, or the new crossings and appurtenances, and that the County has approved the preliminary plans as shown on Petitioners Exhibits 3 and 4, although final construction plans for each crossing were not available.

Mr. James Binder, Manager of Site Development for the CN Railway, testified on behalf of the Petitioner in regard to the east spur of the WT track that will connect to the Bluford Subdivision of the IC mainline track. The IC mainline carries approximately 20 trains per day at 60 miles per hour. According to Mr. Binder the trains coming out of the Mine will consist of 100-110 car trains and the IC is willing and able to handle all freight shipped from the Mine.

On January 11, 2006, pursuant to proper legal notice, an evidentiary hearing was held before an Administrative Law Judge ("ALJ") in the Commission's office in Springfield, Illinois. An appearance was entered by Mr. Joseph VonDeBur, Railroad

Safety Specialist, representing the Rail Safety Section of the Commission's Transportation Bureau ("Staff"). Mr. VonDeBur stated that on December 13, 2005, representatives of the Illinois Commerce Commission, the Illinois Department of Transportation, Williamson County, Williamson Transportation LLC and Williamson Energy LLC, conducted a diagnostic review of the proposed new crossings. As a result of that diagnostic review, it is the recommendation of Staff that automatic flashing light signals and gates be installed at all of the proposed crossings listed in both the original and amended Petition; Monroe Avenue, Duncan Road, Eberhardt Road, Old Frankfort Road, Old Ben Road, Harris School Road, Williams Prairie Road, Liberty School Road, Dwina Road, Jordans Fort Road, Thomsonville Road and Crawford Road, all in the vicinity of Johnston City, Williamson County, Illinois. No further testimony was presented. At the conclusion of the January 11, 2006, hearing the record was marked "Heard and Taken".

A proposed order was served on the parties on or about February 1, 2006. No briefs on exceptions were filed.

The Commission, having given due consideration to the entire record in this matter, finds that:

- (1) the Commission has jurisdiction over the parties and the subject matter of this proceeding;
- (2) the recitals of fact, as set forth in the prefatory portion of this Order are true and correct and are hereby adopted as findings of fact;
- (3) Petitioners' proposed spurs will intersect at grade with twelve (12) public roadways within the jurisdiction of Williamson County; The west spur line will cross Monroe Avenue, Duncan Road, Eberhardt Road, Old Frankfort Road, Old Ben Road, Harris School Road, Williams Prairie Road, and Liberty School Road and the east spur will cross Dwina Road, Jordans Fort Road, Thomsonville Road and Crawford Road;
- (4) Petitioners propose that all costs for planning, construction, maintenance and operation of the proposed new highway-rail grade crossings be paid by Williamson Energy LLC and/or Williamson Transportation LLC;
- (5) Petitioners' request to construct the aforementioned grade crossings is fair and reasonable and should be granted;
- (6) Staff recommends that all of the proposed grade crossings be equipped with bells and automatic flashing light signals and gates controlled by constant warning time circuitry; Petitioners should submit construction plans for the proposed crossings to the Commission for approval, prior to actual construction. Said plans should include, but not be limited to, plans and profiles of the proposed roadways as well as circuitry plans for the automatic flashing light signals and gates;

- (7) train traffic on the proposed will consist of an average of 2.5-3 trains per day, carrying 100-110 cars at 25 miles per hour;
- (8) 625 ILCS 5/18c-1701 and 1704 require each "person", as defined by Section 18c-1104, to comply with every regulation or order of the Commission. These sections further provide that any person who fails to comply with a Commission regulation or order shall forfeit to the state not more than \$1,000 for each such failure, with each day's continuance of the violation being considered a separate offense. While the Commission expects all parties to comply with this Order in all matters addressed herein and in a timely manner, the Commission advises that any failure to comply may result in the assessment of such sanctions.
- (9) Any person making a Request for an Extension of Time up to 30 days to complete a project ordered by the Commission must file a request with the Director of Processing and Information no later than 14 days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.
- (10) Any person making a Request for an Extension of Time that exceeds 30 days must file a Petition for Supplemental Order with the Director of Processing and Information no later than 21 days in advance of the scheduled deadline. The Commission will decide Petitions for Supplemental Orders.
- (11) Requests for Extension of Time and Petitions for Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request for Extension of Time or a Petition for Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered timeframe.
- (12) The Commission or its Administrative Law Judge reserves the right to deny Petitions for Supplemental Orders and Requests for Extension of Time, if the reason(s) supporting the request is (are) insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS THEREFORE ORDERED that permission is hereby granted to the Petitioners, Williamson County, Williamson Energy LLC and Williamson Transportation LLC, to construct 12 highway-rail grade crossings, at the locations noted in Finding (3) herein, and thereafter maintain the new grade crossings in accordance with 92 Ill. Adm. Code, Part 1535.

IT IS FURTHER ORDERED that construction of each of the 12 new grade crossings shall include automatic flashing light signals and gates and bells all controlled by constant warning time circuitry, in accordance with 92 Ill. Adm. Code, Part 1535.

IT IS FURTHER ORDERED that the Petitioners shall, for every new grade crossing, file with the Commission Form 3 of 92 Ill. Adm. Code, Part 1535, showing details of the new crossing construction and automatic warning device installation herein required, and shall receive approval thereof by X-Resolution prior to commencing the work.

IT IS FURTHER ORDERED that the construction of each of the 12 new grade crossings shall include a new surface and approaches constructed in accordance the 92 Ill. Adm. Code, Part 1535.

IT IS FURTHER ORDERED that Williamson County shall install, and thereafter maintain, new Highway-Rail Advance Warning (W10-1) signs in the vicinity of each of the new grade crossings in accordance with the Manual on Uniform Traffic Control Devices for Streets and Highways, 2003 Edition, and 92 Ill. Adm. Code, Part 1535.

IT IS FURTHER ORDERED that the Petitioners are required and directed to proceed immediately in constructing and equipping said crossings, and shall complete the work within 12 months from the date of this Order.

IT IS FURTHER ORDERED that all construction costs for the new grade crossings, including, but not limited to, highway approach work, surface installation, all appropriate signage, warning device and circuitry installation, as well as all future operating and maintenance costs shall be paid by Williamson Energy LLC and/or Williamson Transportation LLC.

IT IS FURTHER ORDERED that the Petitioners shall, at six (6) month intervals from the date of Commission Order, submit to the Director of Processing and Information, Transportation Bureau of the Commission, a Project Status Report, stating the progress they have made toward completion of the work herein required. Each Project Status Report shall include the Commission Order number, the Order date, the project completion date as noted in the Order, crossing information (inventory number and railroad milepost), type of improvement, and the name, title, mailing address, phone number, facsimile number, and electronic mailing address of the Petitioners' Project Manager.

IT IS FURTHER ORDERED that the Petitioners shall within five (5) days of the completion of the each crossing, submit a completed United States Department of Transportation Inventory Form (#6180.71) to the Federal Railroad Administration, the Chief of Data Services at the Illinois Department of Transportation, and the Director of Processing and Information, Transportation Bureau of the Commission.

IT IS FURTHER ORDERED that the Petitioners are hereby required and directed to submit a Project Status Report, to the Director of Processing and Information, Transportation Bureau of the Commission, stating that the work herein required of it has been completed. Said Report shall be submitted within five (5) days after the project completion date.

IT IS FURTHER ORDERED that the Commission shall retain jurisdiction for the purpose of issuing any supplemental order, or orders, as it may deem necessary.

IT IS FURTHER ORDERED that any person making a Request for an Extension of Time up to 30 days to complete a project ordered by the Commission must file a request with the Director of Processing and Information no later than 14 days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.

IT IS FURTHER ORDERED that any person making a Request for an Extension of Time that exceeds 30 days must file a Petition For Supplemental Order with the Director of Processing and Information no later than 21 days in advance of the scheduled deadline. The Commission will decide Petitions for Supplemental Orders.

IT IS FURTHER ORDERED that requests For Extension of Time and Petitions for Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request for Extension of Time or a Petition for Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered timeframe.

IT IS FURTHER ORDERED that the Commission or its Administrative Law Judge reserves the right to deny Petitions for Supplemental Orders and Requests for Extension of Time, if the reason(s) supporting the request is (are) insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS FURTHER ORDERED that any future changes at the crossings shall be made in accordance with 92 Illinois Administrative Code, Part 1535 and all applicable Commission and Illinois Department of Transportation rules and regulations.

IT IS FURTHER ORDERED that this Order shall be binding upon the parties hereto, their successors or assigns.

IT IS FURTHER ORDERED that, subject to Section 18c-2201 and 18c-2206 of the Law, this is a final decision subject to the Administrative Review Law.

By Order of the Commission this 22nd day of March, 2006.

A handwritten signature in cursive script, appearing to read "Charles E. Boyer".

Chairman